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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/586,317 | 07/14/2006 | Takafumi Koshinaka | Y0647.0161 | 2564 |
| 32172 7590 07/22/2009 DICKSTEIN SHAPIRO LLP 1633 Broadway NEW YORK, NY 10019 | | | | |
| EXAMINER BORSETTI, GREG | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2626 | | | | |
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| 07/22/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|--|
| Application No. 10/586,317 | Applicant(s) KOSHINAKA, TAKAFUMI |
| Examiner GREG A. BORSETTI | Art Unit 2626 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Talivaldis Ivars Smits/
Primary Examiner, Art Unit 2626

/Greg A. Borsetti/
Examiner, Art Unit 2626

Continuation of 11, does NOT place the application in condition for allowance because: Response to Arguments
Applicant argues that Koshinaka is not prior art under 35 USC 102 (b). The Examiner agrees. The rejection under Koshinaka is withdrawn. However, the rejection under Utiyama and Blei stands.

Applicant further argues "Applicant respectfully points out that the Utiyama reference supplied by the Examiner bears no date which allows Applicant to independently verify the publication date thereof. The only date supplied to Applicant was that listed on the Notice of References Cited accompanying the Office Action. Therefore, Applicant respectfully requests that the Examiner specifically provide the evidence showing the publication date of Utiyama, or withdraw this publication as a reference against the pending claims." (Remarks, Page 11, 1) The Examiner directs application to any one of Citeseer, aclweb.org, acm.org, all are well known databases which have the Utiyama reference. At the time of this action, the well known NPL search engine Google Scholar, shows 19 versions of the document. If applicant so chooses to search, the examiner used "utyama domain independent" and had the reference show up in Google Scholar. The reference will not be withdrawn.

Applicant further argues "By Utiyama's own admission, using a method such as Blei's in combination with Utiyama is only contemplated when training data is available. As such, one of skill in the art would not find it obvious to combine Utiyama and Blei and eliminate the need for training data. Quite to the contrary, Utiyama specifically states that training data use would be needed if such a combination were to occur. Thus, it would not have been obvious to one of skill in the art to combine Blei and Utiyama in the absence of training data and estimate a model parameter using the text itself, as required by independent claims 1, 10, 11, 12, 21, 22 and 23." (Remarks, Page 12, 2) The Examiner disagrees. The combination is not only contemplated when training data is available, Utiyama specifically says "It would be interesting, however, to compare our algorithm with their algorithm for the case when training data is available." (Page 505) Meaning, when training data is available to the algorithm of Utiyama, it could be taken into consideration to make judgements on topic segmentation similar to Blei. Training data would change how the system recognizes topics based on known information, that is what would be "interesting" because it puts both algorithms on a level field for comparison. Therefore, the Examiner still contends that it would have been obvious to someone of ordinary skill in the art at the time of the invention to combine Utiyama with Blei to avoid using training data for text segmentation so that the method could be applied to text from any domain. The argument is not persuasive. .